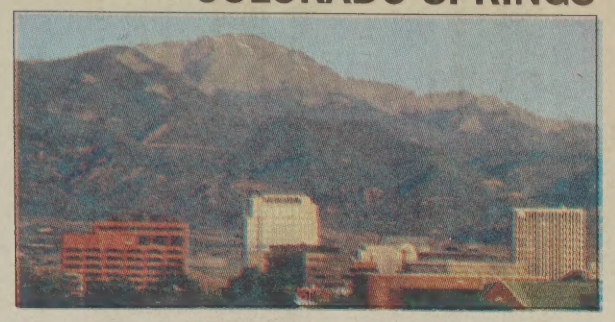
COLORADO SPRINGS



GAZETTE TELEGRAPH

TUESDAY JULY 20, 1993 35¢ DAILY/$1 SUNDAY

STATE

Court: Amendment 2 flawed

Ruling extends ban keeping measure from becoming law

By **Louis Aguilar**
Gazette Telegraph

DENVER — The Colorado Supreme Court said Monday there is a strong likelihood that Amendment 2 will be ruled unconstitutional so the measure should not go into effect until the courts make that decision.

In its 6-1 decision, the state Supreme Court upheld an injunction issued Jan. 15 by Denver District Judge Jeffrey Bayless that has kept Amendment 2 from becoming law. Amendment 2 is being challenged on constitutional grounds in a separate lawsuit scheduled to be tried in October by Bayless.

But the high court ruling means proponents of Amendment 2 will have an uphill battle in defending the law, some experts say. The state must now prove why it needs to have the law, they said.

Gay rights groups applauded the decision, saying they are a bit closer to overturning the measure. But a spokesman for Colorado for Family Values, authors of the amendment, said the group will continue the fight to uphold the law.

In its decision, the court discussed whether the amendment conflicts with the U.S. Constitution by prohibiting gays from participating equally in the political process.

The justices noted that the measure, in effect, bars gays from obtaining relief from the Legislature or courts unless they first succeed in amending the state constitution to overturn Amendment 2. That, the justices said, appears to deny them a fundamental right guaranteed under the Fourteenth Amendment, which says states may not deny equal rights to any person.

"Amendment 2 expressly fences out (of the political process) an independently identifiable group," the court wrote in its 38-page majority opinion.

"No other identifiable group faces such a burden — no other group's ability to participate in the political process is restricted and encumbered in a like manner," the court said. "Such a structuring of the political process undoubtedly is contrary to the notion that 'the concept of we the people under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.' "

But in a 38-page dissenting argument, Justice William Erickson argued that the majority ruling lacked legal precedent. The U.S. Supreme Court has never extended the Constitution's equal-protection clause to gays as a group, he said. So, to say that gays have a fundamental right to participate equally in the political process is wrong.

The amendment would ban laws that protect homosexuals from discrimination based on their sexual orientation. The measure was approved by 53 percent of the state voters in November.

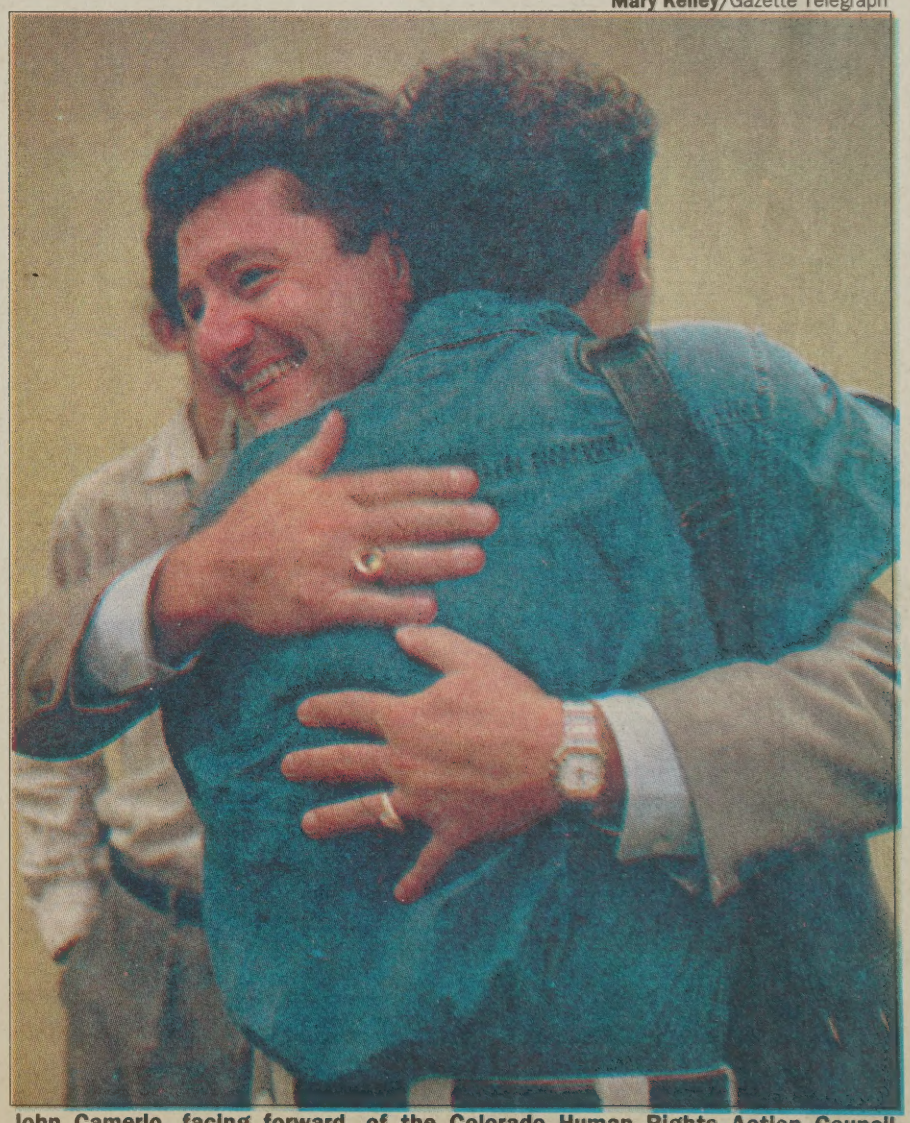
But within weeks, opponents of the measure filed suit, claiming the

See **AMENDMENT 2**/A3

Stuart Wong/Gazette Telegraph

Colorado for Family Values spokesman Will Perkins answers questions on Amendment 2's setback at a news conference Monday in Colorado Springs.

Mary Kelley/Gazette Telegraph



John Camerlo, facing forward, of the Colorado Human Rights Action Council, hugs Lawrence Pacheco of Equality Colorado after a Denver news conference Monday on Amendment 2. Both organizations oppose the amendment.

■ Both Amendment 2's backers and its opponents vow to continue the fight/**A3**

■ Excerpts spell out the Colorado Supreme Court's reasoning behind its ruling/**A3**

DIGEST

NATION

▶ **KIDS FAMILIAR WITH GUNS, STUDY SAYS:** Getting a handgun is no problem for millions of American children, a survey indicates. The survey of about 2,500 students describes a generation immersed in a culture of guns and violence that has left many shadowed by anxiety and deep pessimism about their future./**A5**

WORLD

▶ **U.S., KOREA REACH COMPROMISE:** The United States and North Korea announced a compromise Monday to defuse the confrontation over North Korea's refusal to permit international inspection of suspected nuclear sites./**A7**

▶ **STANDOFF WITH IRAQ DISSOLVES:** A U.N. envoy and Iraqi officials reached an "interim solution" Monday to a standoff over Iraqi missile test sites, ending the immediate threat of a punitive strike by Western allies./**A7**

OPINION

▶ **ECONOMIC GIANT PASSES:** While many other economists insisted an economy can't be run without them, free-market advocate Henry Hazlitt, who died earlier this month, said an economy can't be run at all. Columnist Joseph Sobran eulogizes Hazlitt./**A9**

CITY/REGION

▶ **SHERIFF'S OFFICE SETTLES LAWSUIT:** A lawsuit against the El Paso County Sheriff's Office, spurred by what one minority leader calls "one of the most blatant examples of police brutality" in county history, was settled Monday for $160,000./**B1**

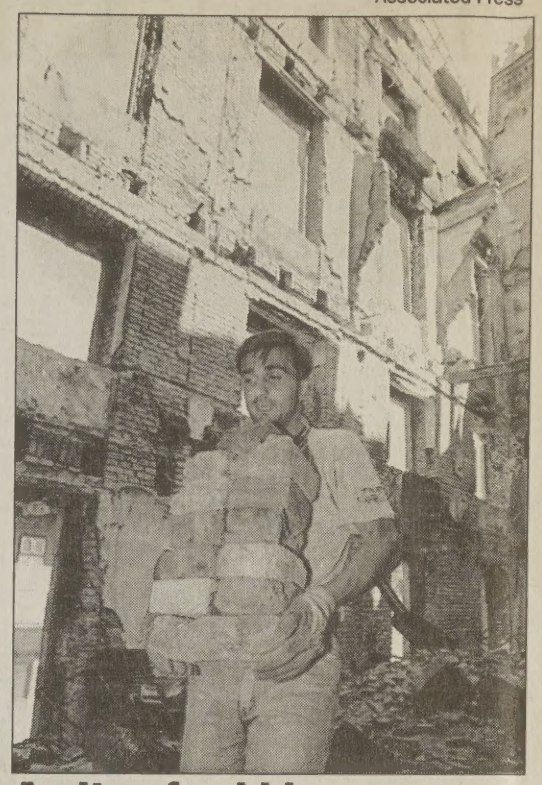
STATE

▶ **HOUSE OKS WILDERNESS BILL:** The House on Monday passed a bill protecting 766,670 acres of Colorado's most pristine wilderness from development. The House vote was the first on a compromise more than 10 years in the making, a sign that the measure may finally become law, supporters say./**B1**

SPORTS

▶ **KUKOC SIGNS ON WITH BULLS:** After winning three straight NBA titles, the Chicago Bulls shouldn't need much help. They got it anyhow Monday, signing three-time European Player of the Year Toni Kukoc./**C3**

Associated Press



A city of rubble

A resident of Sarajevo, the Bosnian capital, collects bricks Monday from the remnants of the city library. The man said he will use the bricks to close up windows in his house. Fierce fighting raged Monday in a mountain area outside Sarajevo. WORLD/**A10**

LIFESTYLE

▶ **THE END-OF-VACATION BLUES:** Feeling let down, irritable and moody after that perfect vacation? You are not alone. Many people suffer Post Vacation Stress Syndrome./**D1**

BUSINESS

▶ **ANTICIPATING FUTURE GAS NEEDS:** The city of Colorado Springs will join Colorado Interstate Gas Co. in a $45 million project to develop a natural-gas storage field in northeastern Colorado, a company official said Monday./**F1**

▶ **STILL A WAY TO GO:** In the year since sections of the Americans with Disabilities Act pertaining to private employment took effect, the overall results have been mixed. Job creation for the disabled, one of the act's key goals, hasn't happened./**F1**

PEOPLE, ETC.

'Gilligan' sour grapes

Can you imagine **Raquel Welch** as Mary Ann on "Gilligan's Island?" She was up for the part before **Dawn Wells** got it. **Carroll O'Connor** was considered for the skipper, **Jerry Van Dyke** for Gilligan and **Dabney Coleman** for the professor. **Russell Johnson**, who won the role of the professor, now wishes he had never taken the job. "I think every one of us probably would've said no," Johnson said. "The point is that I did it and there's no going back." Johnson, who has written a book on the sitcom, says the show ruined his acting career because he was typecast in the role of professor. Johnson, who lives in Washington state, acts occasionally and does commercial voiceovers.

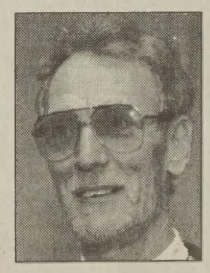
Back in the saddle

Ginger Baker, the drummer for 1960s rock legend **Cream**, easily makes the switch from sticks to saddles. Baker, 52, played Sunday in the Charity Polo Cup at Denver's Cottonwood Riding Club, which raised money for the Colorado AIDS Project. "I played my first polo game 10 days after I got on a horse. . . . It was a lot of fun," said the London-born Baker. He has nine polo horses for his spread near Santa Ynez, Calif.

Wax for sale

Elton John will auction his huge pop record collection to raise money for AIDS sufferers, Sotheby's of London said Monday. John hopes to raise around $200,000 by selling his 25,000 albums and 23,000 singles to a single buyer. Sotheby's is accepting sealed bids until July 29.

Johnson
Actor regrets role in "Gilligan's Island."



Baker
Legendary drummer is at home on a horse.

A nut for the '90s

He's not the stodgy guy you remember from your childhood. Now Mr. Peanut is a laid-back guy. Mr. Peanut, who dates back to 1916, usually appears standing stiff and formal. The Planters trademark will still have the top hat, monocle and cane. But the packaging for new products being introduced this year shows Mr. Peanut sporting cowboy boots or kicking back wearing a lei.

Dumping on Kirk

To write his memoirs, **William Shatner** boldly went where he'd gone before. And what did he discover about many of his former "Star Trek" co-stars? "People disliked me, something of which I had no awareness at all," Shatner told TV Guide. **Walter Koenig** (Chekov) says: "Bill from the beginning believed the credits — that there were three actors above the title (Shatner, **Leonard Nimoy** and **DeForest Kelley**) and the rest of us were below. The rest of us were not significant, not only as actors, but as people." Shatner says it was "not so much arrogance as single-mindedness, which I think was my most unpleasant feature."

Gazette Telegraph news services

▼▼▼ TABLOID TIDBITS

"Fat woman's bra snaps — 13 injured!" — "Busty Olga Maltov was on a crowded staircase when her 42 double D bra popped — and injured 13 people," the Weekly World News reports in its July 27 issue. Six shoppers suffered broken bones, six others suffered shock, and one woman had a heart attack. "I feel terrible about what happened," says Maltov, of Moscow. "But I blame the government. It's their fault the bras Russian women have to wear are medieval torture traps."

"360,000 U.S. husbands are space aliens" — "If you think you have a husband from hell, he could be an alien and your male children as well," Dr. Sophia Manning is quoted as saying in the July 20 issue of the Sun. "Eventually, the aliens hope to replace all human males and enslave the remaining females," Manning says. Among warning signs your husband is an alien: He hates vegetables and spends time in bars and bowling alleys.

Keno

MONDAY NIGHT'S NUMBERS:

4	13	14	15
16	18	21	23
25	26	29	31
35	39	44	45
46	56	59	60

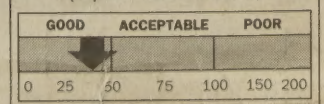
WEATHER

LOCAL FORECAST

Today: Partly sunny; an afternoon thunderstorm in spots. High 84.
Tonight: Turning out mostly clear. Low 56.
Wednesday: Clouds and sunshine; chance of a p.m. thunderstorm. High 86, low 58.
Thursday: Sunny to partly cloudy. High 88, low 60.
Friday: Sunshine and patchy clouds; continued very warm. High 88, low 60.

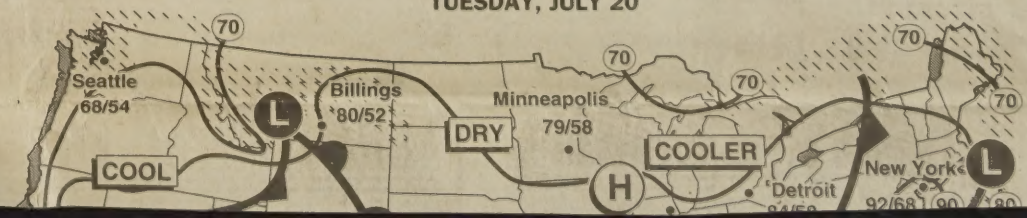
STATISTICS

AIR QUALITY
(3 p.m. MON. JUL. 19)



OZONE - 44
CARBON MONOXIDE - 8

TODAY'S ACCU-WEATHER® FORECAST
TUESDAY, JULY 20



Mary Kelley/Gazette Telegraph

Amendment 2 opponents, from left, attorney Gregory Eurich; James Joy, executive director of the ACLU; Mary Celeste, attorney for the Colorado Legal Initiatives Project; and ACLU attorney David Miller hold a news conference Monday in Denver after the state Supreme Court's ruling on Amendment 2.

Amendment 2/Governor favors an immediate appeal

From A1

amendment was unconstitutional. They also asked for an injunction to keep the measure from becoming law. Bayless granted the injunction, and the state appealed to the Supreme Court, which upheld Bayless' ruling.

The state, which is defending the amendment, now can appeal to the U.S. Supreme Court or prepare for the upcoming trial. Gov. Roy Romer wants an immediate appeal, but Colorado Attorney General Gale Norton said she hasn't decided on which route to follow.

But, she said she fears the ruling may endanger the state's initiative process.

"It may take some issues away for the voters, especially civil rights issues," she said. "It creates a situation where you may be able to decide about gay rights on a local issue but cannot do it on a state level."

Gene Nichol, dean of the University of Colorado School of Law and an opponent of Amendment 2, said he was surprised by the overwhelming agreement by six of the justices.

"Many people expected a closer vote — whatever way it was going to go," he said. "This is not a court with a liberal reputation. In this ruling, you see conservatives and liberals agreeing on this."

And, he said, the ruling will make it tough for the state to fight for the amendment.

"The court has set up a framework, as has Judge Bayless, that is so demanding that there is no chance almost that Amendment 2 can be successfully defended by the state," Nichol said."My own view of it is that this is effectively a final verdict at least from the Colorado courts."

Stuart Wong/Gazette Telegraph

Bruce Loeffler, a member of Colorado Springs-based Ground Zero, a gay rights group, speaks Monday during a news conference in Colorado Springs.

Another Denver legal expert agreed.

"The Colorado Supreme Court has sent a strong signal that when Amendment 2 is tried on its merits, it will likely be found unconstitutional," said John Reese, a University of Denver law professor whose specialty is constitutional law.

"It looks as though the Colorado courts are ready to strike it down," he said. "The question is will the (U.S.) Supreme Court take the case."

That potential for victory in Colorado's courts was hailed Monday by the state's gay community and lawyers seeking to overturn the amendment.

"The likelihood of our winning that trial has greatly increased," said Mary Celeste, part of the coalition of attorneys working to overturn the amendment. The group is called the Colorado Legal Initiatives Project.

Nine Colorado citizens, including Springs resident John Miller, and the cities of Denver, Boulder and Aspen are the plaintiffs in the lawsuit.

David Miller, an attorney for the American Civil Liberties Union who also is involved in the lawsuit, said the ruling refutes Colorado for Family Values' argument that Amendment 2 is about "special rights" for gays.

"I think it's clear now that what we are dealing with is equal protection. That is the main issue of the amendment. And if that is the main issue, that is not something that can be denied by a majority vote," he said, reiterating part of the high court's ruling.

The Associated Press contributed to this report.

WHAT'S NEXT

The state trial on Amendment 2's constitutionality is scheduled to begin Oct. 12 in Denver District Court. But if Colorado Attorney General Gale Norton appeals Monday's ruling, the trial could be delayed for months. The U.S. Supreme Court does not reconvene until October, and it is not compelled to respond to any request by a state by a particular deadline.

RULING EXCERPTS

Here are excerpts from the Colorado Supreme Court's ruling Monday upholding an injunction against enactment of Amendment 2:

"Amendment 2, to a reasonable probability, infringes on a fundamental right protected by the Equal Protection Clause of the United States Constitution."

"The Equal Protection Clause . . . protects the fundamental right to participate equally in the political process. . . . Any legislation or state constitutional amendment which infringes on this right by 'fencing out' an independently identifiable class of persons must be subject to strict judicial scrutiny."

"The right of (gay men, lesbians and bisexuals) to participate equally in the political process is clearly affected by Amendment 2. . . . They and they alone must amend the state constitution in order to seek legislation which is beneficial to them."

"In contrast to all other members of the electorate . . . gay men, lesbians and bisexuals are told that 'you can appeal to government on those issues of concern to you, but you will, by virtue of Amendment 2, lose — irrespective of your ability to summon the support of others, or carry a majority in an election.' "

From Justice William Erickson (dissenting):

"The majority's underlying legal premise that the Supreme Court has recognized a fundamental right to participate equally in the political process is erroneous."

The Pentagon's new policy guidelines on homosexual conduct in the armed forces:

ACCESSION POLICY

Applicants for military service will no longer be asked or required to reveal if they are homosexual or bisexual, but applicants will be informed of the conduct that is proscribed for members of the armed forces, including homosexual conduct.

DISCHARGE POLICY

Sexual orientation will not be a bar to service unless manifested by homosexual conduct. The military will discharge members who engage in homosexual conduct, which is defined as a homosexual act, a statement that the member is homosexual or bisexual, or a marriage or attempted marriage to someone of the same gender.

INVESTIGATIONS POLICY

No investigations or inquiries will be conducted solely to determine a service member's sexual orientation. Commanders will initiate inquiries or investigations when there is credible information that a basis for discharge or disciplinary action exists. Sexual orientation, absent credible information that a crime has been committed, will not be the subject of a criminal investigation. An allegation or statement by another that a service member is a homosexual, alone, is not grounds for either a criminal investigation or a commander's inquiry.

ACTIVITIES

Bodily contact between service members of the same sex that a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts (e.g., hand-holding or kissing in most circumstances) will be sufficient to initiate separation.

Activities such as association with known homosexuals, presence at a gay bar, possessing or reading homosexual publications or marching in a gay rights rally in civilian clothes will not, in and of themselves, constitute credible information that would provide a basis for initiating an investigation or serve as the basis for an administrative discharge under this policy.

Speech within the context of priest-penitent, husband-wife or attorney-client communications remains privileged.

OFF-BASE CONDUCT

No distinction will be made between off-base and on-base conduct.

From the time a member joins the service until discharge, the service member's duty and commitment to the unit is a 24-hour-a-day, seven-day-a-week obligation. Military members are required to comply with both the Uniform Code of Military Justice, which is federal law, and military regulations at all times and in all places. Unacceptable conduct, homosexual or heterosexual, is not excused because the service member is not "at work."

INVESTIGATIONS AND INQUIRIES

Neither investigations nor inquiries will be conducted solely to determine an individual's sexual orientation.

Commanders can initiate investigations into alleged homosexual conduct when there is credible information of homosexual acts, prohibited statements or homosexual marriage.

Commanders will exercise sound discretion regarding when credible information exists, and will evaluate the information's source and all attendant circumstances to assess whether the information supports a reasonable belief that a service member has engaged in proscribed homosexual conduct. Commanders, not investigators, determine when sufficient credible information exists to justify a detail of investigative resources to look into allegations.

CREDIBLE INFORMATION

Credible information of homosexual conduct exists when the information, considered in light of its source and all attendant circumstances, supports a reasonable belief that a service member has engaged in such conduct. It requires a determination based on articulable facts, not just a belief of suspicion.

SECURITY CLEARANCES

Questions pertaining to an individual's sexual orientation are not asked on personnel security questionnaires. An individual's sexual conduct, whether homosexual or heterosexual, is a legitimate security concern only if it could make an individual susceptible to exploitation or coercion, or indicate a lack of trustworthiness, reliability or good judgment that is required of anyone with access to classified information.

THE THREAT OF EXTORTION

As long as service members continue to be separated from military service for engaging in homosexual conduct, credible information of such behavior can be a basis for extortion. Although the military cannot eliminate the potential for the victimization of homosexuals through blackmail, the policy reduces the risk to homosexuals by making certain categories of information largely immaterial to the military's initiation of investigations.

Only credible information that a service member engaged in homosexual conduct will form the basis for initiating an inquiry or investigation of a service member; suspicion of an individual's sexual orientation is not a basis, by itself, for official inquiry or action.

Extortion is a criminal offense, under both the UCMJ and United States Code, and offenders will be prosecuted. A service member convicted of extortion risks dishonorable discharge and up to three years' confinement. Civilians found guilty of blackmail under the U.S. Code may be subject to a $2,000 fine and one-year imprisonment. The risk of blackmail will be addressed by educating all service members on the policy and by emphasizing the significant criminal sanctions facing convicted extortionists.

OUTING

A mere allegation or statement by another that a service member is a homosexual is not grounds for official action. Commanders will not take official action against members based on rumor, suspicion or capricious allegations.

However, if a third party provides credible information that a member has committed a crime or act that warrants discharge, e.g., engages in homosexual conduct, the commander may, based on the totality of the circumstances, conduct an investigation or inquiry, and take nonjudicial or administrative action or recommend judicial action, as appropriate.

Commanders are responsible for initiating an investigation when credible information exists that a crime or basis for discharge has been committed. The commander examines the information and decides whether an investigation by the service investigative agency or a commander inquiry is warranted, or if no action should be taken.

HARASSMENT

Commanders are responsible for maintaining good order and discipline.

All service members will be treated with dignity and respect. Hostile treatment or violence against a service member based on a perception of his or her sexual orientation will not be tolerated.

— **Associated Press**

season on those who have come out and put their necks on the line thinking it would be safe soon," said a lesbian who recently left the Air Force to work for a defense contractor in Colorado Springs.

Other gays are more optimistic. As one gay master sergeant at the Air Force Space Command said: "My gay friends think it's a complete cop-out, but I believe

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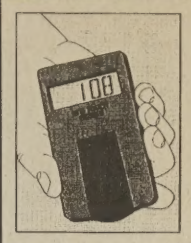

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Public Notice
Colorado Airspace Initiative

The United States Air Force and National Guard Bureau will prepare an Environmental Impact Statement on proposed modifications for selected military operations areas and training routes, also known as Special Use Airspace (SUA) in Colorado, Kansas, New Mexico and Wyoming.

You are invited to participate in this process through your comments at:

Public Scoping Meetings To Be Held At The Following Locations:

Community	Location	Date/Time
Penrose	Penrose School	August 2, 7 p.m.*
Westcliffe	Custer County High School	August 3, 7 p.m.*
Moffat	Moffat School	August 4, 7 p.m.*
Rye	Rye High School	August 5, 7 p.m.*
Fowler	High School	August 9, 7 p.m.*
Las Animas	High School	August 10, 7 p.m.*
Tribune, KS	Greeley County High School	August 11, 7 p.m.*
Kit Carson	Town Hall	August 12, 7 p.m.*
New Raymer	Prairie School	August 17, 7 p.m.*

*Informational Meeting will begin at 4 p.m. Traditional Scoping Meeting will start at 7 p.m.

For more information, please contact:
Mr. Steve Wolf, (301)981-8172
Major Tom Schultz, 1-800-762-4504 (ext. 3020)
or write:
Colorado National Guard
Public Affairs Office
6848 S. Revere Pkwy, Ste 218
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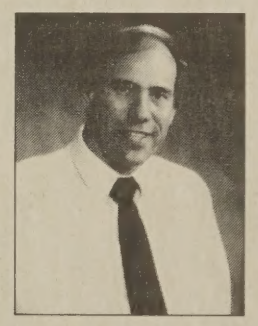

Vern Gazvoda
Senior Quality Engineer
Ampex Recording Systems Corporation

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